

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C.) No.2337/2008**

% **Date of decision : 25.03.2008**

Ashok Kumar & Others Petitioners
Through: Mr.Varun Prasad, Advocate.

Versus

Executive Engineer, CPWD Respondent
Through : Nemo.

CORAM :-

HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

1. The petitioners have impugned the award dated 20th July, 2007 by Industrial Tribunal cum Labour Court II declining the reference

whereby claim of petitioners for regularization in the establishment of CPWD was declined.

2. The petitioners raised an industrial dispute pursuant to which the appropriate Government had made the following reference for adjudication to the Industrial Tribunal cum Labour Court II:-

“Whether the demand of the All India CPWD Karamchari Union, New Delhi that S/Shri Ashok Kumar, Rakesh Kumar and Jaswant who are working as wiremen through contractor in the establishment of CPWD, Electrical Division, VIII, New Delhi should be regularized in the establishment of CPWD w.e.f. 07.10.2002 is legal and justified? If so, to what relief the workmen are entitled.”?

3. The petitioners contended that petitioner No.1 was initially inducted on 7th October, 2002; petitioner No.2 was inducted on 7th October, 2002 whereas the petitioner No.3 was also inducted on 7th October, 2002 as wiremen through the private contractor. Petitioners contended that ever since their employment they had been discharging their jobs diligently and sincerely and were posted at Shastri Bhawan, Sub Division III under the Executive Engineer, Electrical Division VIII No.2. According to petitioners, the job discharged by them was perennial and permanent in nature and satisfied all the ingredients contained under Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 and, therefore, the

contract between petitioners and the contractor was bad in law. The petitioners pleaded that they were placed under direct control and supervision of the principal employer and the contractor had no role to play in day-to-day affairs and the working of the workmen and the nature of job performed by petitioners was similar to job carried on by the regular employees of the respondent/principal employer. In these circumstances, the petitioners claimed regularization of their services with the respondent.

4. The claim was contested by the respondent contending inter alia that the petitioners were not engaged by the Department of CPWD and they were engaged by a contractor who had taken the contract of running operations of sub Station at Shastri Bhawan. According to the respondent, the workmen/petitioners were always under the control, administration and supervision of the contractor who had employed them. The respondents asserted that there is already regular and sufficient staff with the Department of CPWD to carry out their work. However, the petitioners were employed by the Contractor to carry out some additional work and in order to meet sporadic need. The respondent has given specific jobs to the contractor which are purely temporary and need based. After taking the contracts, the contractors employed their personnel and petitioners are such

personnel.

5. The respondents opposed the regularization on the ground that for engagement on permanent basis, there is a definite process of appointment. After due notification of the vacancies, the names of appropriate suitable candidates are called from the employment exchange and the petitioners were never appointed to permanent posts and they are not entitled for regularisation in the facts and circumstances. It was also contended that the petitioners were not appointed on any substantive vacancy on permanent basis nor their names were called from the employment exchange nor they had been issued any appointment letters by the respondent.

6. I have heard the learned counsel for the petitioner and perused the award dated 20th July, 2007 and other relevant depositions and documents filed by the petitioners. Learned counsel for petitioners has contended that the petitioners were under the direct control of the respondent and have relied on the documents filed along with the writ petition from page Nos.122 to 230. However, perusal of the evidence led before the Industrial Tribunal by the petitioner, it is apparent that none of these documents were proved by the petitioners nor these documents were put to the respondent in the cross examination. The

documents which were not proved by the petitioner and not put to the opposite party cannot be relied on for impugning the award in the proceedings under Article 226 of the Constitution of India. The documents now sought to be relied on by the petitioners were in their power and possession and no ground has been made out for their non production before the Labor Court. There is no ground canvassed by the petitioner for consideration of additional documents and additional evidence.

7. Learned counsel for the petitioner has very emphatically relied on the fact that neither the respondent nor the contractor who had employed the petitioners were registered under the Contract Labour (Regulation & Abolition) Act, 1970. This is also admitted by the parties that the contract labour had been abolished by a notification dated 31st July, 2002 and the Ministry of Labour had prohibited the employment of contract labour for office/establishment of CPWD for the work of wireman which fact was also accepted by MW1.

8. The Labour Court has held that the petitioners were engaged in breach of provisions of Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970 and, therefore, it was further held that though the management acted in breach of Section 7 and 12 of the Contract

Labour (Regulation & Abolition) Act, 1970, however, relying on the Deena Nath v. National Fertilizers Limited, 1992 LLR 46 (SC) and National Projects Constructions Corporation Limited v. Labour Enforcement Officer, (1991) 62 FLR 497 (Calcutta) it was held that the breach of Sections 7 and 12 of the Act does not entitled the workmen to be regularized. Consequently, relying on other judgments including (2001) 7 SCC 1, Steel Authority of India Limited and others v. National Union Waterfront Workers and Others, it has been held that the petitioners are not entitled for regularization.

9. Perusal of the testimonies of the witnesses on behalf of the petitioner reflects that the petitioners are unable to prove that the work was of perennial nature and the petitioners were working under the control and supervision of the officials of the respondent. Merely because there has been violation of provisions of Contract Labour (Regulation & Abolition) Act, 1970, the petitioners shall not be entitled for regularization. The supreme Court in Steel Authority of India and Others (supra) had held that where a workman is hired through a contractor, master and servant relationship exists but where a workman is hired in or in connection with the work of a establishment to produce a given result or the contractor supplies workmen for any work of the establishment, unless, the contractor is mere camouflage,

the workmen cannot be treated as an employee of the Principal employer. The Apex Court in Steel Authority of India (supra) on page 55 in para 105 had held as under:

“105. The principle that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. We have already noticed above the intendment of the CLRA Act that it regulates the conditions of service of the contract labour and authorizes in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. **But, the presence of some or all those factors, in our view, provides no ground for absorption of contract labour on issuing notification under sub-section (1) of Section 10.** *Admittedly, when the concept of automatic absorption of contract labour as a consequence of issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment.* Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible. We have already held above, on consideration of various aspects, that it is difficult to accept that Parliament intended absorption of contract labour on issue of abolition notification under Section 10(1) of the CLRA Act.

In the case of the petitioner it has been held that the agreement between the respondent and the contractor is valid and is not a sham document and the petitioners are the employees of the contractor. On

the breaches committed by the respondent and contractor of the provisions of the Act, the petitioners will not become entitled for regularization in the service of the respondent. In the circumstances, there is no manifest error or such an error which will entail interference by this Court under Article 226 of the Constitution of India.

10. Learned counsel for the petitioner has also emphasized that in view of the violation of Sections 7 and 12 of the Contract Labour (Regulation & Abolition) Act, 1970, the petitioners have become direct employees of the respondent. The reference made by the appropriate Government was restricted to whether the petitioners are entitled to be regularized in the services of respondent or not. Consequently, neither the Industrial Tribunal has considered about the petitioners having become the direct employee of the respondent nor it had been canvassed before the Court. In the circumstances, this Court is not to give any finding as to whether the petitioners shall be direct employees of the respondent or not. Even if the petitioners will become direct employees of the respondent, they will not be entitled for regularization. If the direct employees of the respondent are appointed on daily basis or to carry out some specific jobs and who are not appointed to substantive permanent posts are not entitled for

regularization, a fortiori, the employees of the contractor who may be deemed to be direct employees of the respondent on account of certain breaches of the Act will also not be entitled for regularization.

11. The writ petition, in the facts and circumstances, is, therefore, without any merit and is liable to be dismissed. The writ petitioner is therefore, dismissed.

March 25th, 2008.
'K/Dev'

ANIL KUMAR J.